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# Confucius says: Privacy is Dead; Get over it...

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## Confucius says: Privacy is Dead; Get over it...

Editorial Essay by Jeffrey Barlow



In 2006 I attended a conference in Victoria, B.C, on the topic "Privacy and Security. [1]" The government of British Columbia sponsored the conference, and it seemed that the civil service of the entire province was in attendance.

I presented a paper on attitudes toward personal privacy in China. I argued simply that what is taken for totalitarian or “communist” control over social relations and information flow in contemporary China actually has deep traditional Confucian roots. The primary issue is simply that the Confucian governmental mandate rested rather firmly on those in power continually exhibiting superior morality. In such a system, political opposition necessarily comes to be configured as moral criticism and is in turn taken by those in power to constitute a moral failing on the part of the critics. At the time, the inclusion of my paper at the conference seemed to belittle more than a bow to diversity, and largely irrelevant to issues facing Canada and the United States.

The other presenters, in addition to Canadian political figures and information technology notables, seemed to fall into two groups: The first was made up of academics and idealists who generally pointed with alarm at the erosion of privacy as a result of the vulnerability of electronic communications, notably the Internet, to private or governmental surveillance. The second group was composed of consultants and industry representatives, who saw the whole issue as largely settled and, hence, tiresome.

In one well-attended panel session the two groups clashed openly. As I recall, one noted intellectual opened the discussion with gruesome details on the steadily mounting threat to privacy. His counterpart came to the podium, shrugged, and announced: “Privacy is dead. Get over it.” While he went on to fill that perspective in somewhat, he had little more to say.

At the time, I was under the hopeful impression that the issue of privacy was still open, in the West if not in China. What a difference two years makes. The recent Elliot Spitzer imbroglio persuades me that privacy, particularly in the U.S. is, indeed, dead, and that its mortal remains are being eagerly cannibalized.

Our well-connected *Interface* audience doubtless is aware of the Spitzer incident. But for those who are too sensitive or perhaps had better things to read about at the time it broke, let's remind ourselves that Spitzer was the Governor and the former Attorney General of the State of New York. He quickly resigned following the initial revelations in *The New York Times* on March 10 that he had been "linked to a prostitution ring." [2] There were, of course endlessly repetitious reports about the events and columnists pointed with amusement or alarm for some weeks. Savvy entrepreneurs quickly jumped aboard, and soon one could buy a "Lov Gov Bear" or a "Love Gov T-shirt" on the web. [3]

Several issues seemed to commentators to be particularly salient. First, Spitzer was incredibly wealthy, as he was thought to have paid up to eighty thousand dollars for sex in the past ten years and as much as four thousand for recent trysts. Secondly, Spitzer was adjudged incredibly hypocritical, as he had made a political career in an almost Confucian fashion by calling for a higher level of morality among various public figures. He had, it is said, initially gained a public awareness when he investigated conflict of interests among investment bankers during the .com bubble [4]. Then he proceeded to indict or sue a parade of financiers and corporate figures as New York State Attorney General, including Richard Grasso, a former Chairman of the New York Stock Exchange.

This combination of Spitzer's hypocrisy and the powerful enemies he had accumulated, many among financial and .com circles, gave the story staggering velocity on the web. It was said, possibly apocryphally, that stockbrokers stood on their desks and cheered at the news. It is probable

that only the flaring up of China-Tibet-Olympics conflicts displaced the story, at least for a while.

What we might not have predicted, however, is the tie that quickly developed between the incident and the lower depths of the Internet. The public's demand for such information is clearly insatiable. The most recent highly priced object of Spitzer's affection, Ashley Dupree, has become an instant celebrity with 456,000 links to her videos on the WWW as of this writing. [5] A man purporting to be her pimp appeared on Fox News, which leaves no stomach unturned in its search for the truth, testifying to her inestimable qualities as a prostitute.

Supposedly confidential legal documents pertaining to the case were not only leaked but are now accessible from at least hundreds, possibly thousands, of sites on the WWW. Mr. Spitzer even has his own Wikipedia entry. [6] Nicely formatted excerpts from "client 9's" messages as entered into the leaked evidence, can be found in the Huffington Post. [7]

Some have felt that it was his political status and the enemies that Spitzer made that ultimately brought him down, and that he was deliberately targeted over a period of time in hopes that something just like this issue would raise its ugly head. Others have argued that the issue that ultimately provoked the investigation--what seemed to be suspicious movements of cash on Spitzer's part--were, in fact, below the threshold that usually triggers suspicion. [8]

We cannot comment on these issues, though we hope that they are thoroughly investigated. But it is extremely unlikely that any ultimate judgments can be made. There are so many exceptions now to privacy laws and protections for electronic rights that a case can be made on a number of grounds for opening up almost anybody's communications. And once the issue is made morality, particularly a conflict between public face and private actions, all rational discourse fades.

It is quite widely believed that the current administrations in national investigative bodies, such as the Attorney General's office, have rarely been even-handed in their investigations. Local New York bodies handed off the Spitzer investigation to the F.B.I. on the grounds that his movements of cash, intended to mask payments for sexual services, may somehow have been related to bribery attempts. But the initial discovery seems to have been related to the bank's concerns about either terrorism or money laundering. Then, it appears, a prolonged sting operation was setup to ensure that if he was arrested it would be for intrastate sexual commerce, a far more serious charge than a local New York charge. Clearly it will take a federal investigation to unravel, if ever, the labyrinth of tangled political and legal motivations.

But, however much many may argue that the incident has deep roots in partisan politics, there can be no Democratic Party outcry calling for an investigation of the investigations of Spitzer. To do so would be to empower the values-oriented Republican "base" of neoconservatives. A perfect Confucian checkmate results: only the immoral would question investigations into morality.

But what I believe, from living in China, is that motives do not matter. Once it becomes possible that you are being eavesdropped upon, that your communications are being archived against possible future transgressions, or being "data mined" with increasingly complex methods that seem simultaneously to be terrifyingly thorough and terrifyingly capable of producing erroneous conclusions, you effectively no longer have any privacy.

I have noticed in the past several years that an increasingly common type of joke among both my students and my colleagues relates to the issue of whether or not one's email is being read. Ironically, the more sophisticated the user, the more likely he or she seems to be concerned, regardless of their obvious innocence, apolitical attitudes, or squeaky clean moral values and practices.

Once you fear you have lost your privacy, you have, in fact, lost it, whether anybody is listening or not. A process of self-censorship properly sets in and you do well to ask yourself how a casual statement in email or on the telephone might be misinterpreted. Interesting or provocative ideas and statements are thoughtfully redacted.

In the Confucian value structure there was little or no separation between the individual's life, including his family life, and the purview of the state. This is what totalitarianism means: everything is properly the concern of the state. Elliot Spitzer has learned this the hard way. So what can a casual user do except self-censor? Perhaps all we can do is recognize that privacy is well and truly dead, and that we do need to get over it.

- [1] The 7th Annual Privacy and Security Conference, Victoria Conference Center, Victoria, B.C. February 10, 2006. See: <http://www.rebootconference.com/privacy2006/>
- [2] See Danny Hakim and William K. Rashbaum, "Spitzer is linked to Prostitution Ring", *The New York Times*, March 10, 2008. [http://www.nytimes.com/2008/03/10/nyregion/10cndspitzer.html?\\_r=1&oref=slogin](http://www.nytimes.com/2008/03/10/nyregion/10cndspitzer.html?_r=1&oref=slogin)
- [3] The "Lov Gov Bear" can be purchased at the usually staid Vermont Teddy Bear site: <http://shop.vermontteddybear.com/luvgov.html>  
  
The rather unimpressive Lov Gov T-shirt is found at:  
[http://www.zazzle.com/spitzer\\_the\\_love\\_gov\\_shirt235449409458462688](http://www.zazzle.com/spitzer_the_love_gov_shirt235449409458462688)
- [4] See Robert Kuttner, "Wake Up, Wall Street: Eliot Spitzer Is a Hero" in *Business Week*, May 19, 2003, at: [http://www.businessweek.com/magazine/content/03\\_20/b3833047\\_mz007.htm](http://www.businessweek.com/magazine/content/03_20/b3833047_mz007.htm)

[5] <http://www.google.com/search?q=ashley+dupree+video&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a>

[6] [http://en.wikipedia.org/wiki/Eliot\\_Spitzer78](http://en.wikipedia.org/wiki/Eliot_Spitzer78)

See: [http://www.huffingtonpost.com/2008/03/10/spitzeras-client-9-read\\_n\\_90787.html](http://www.huffingtonpost.com/2008/03/10/spitzeras-client-9-read_n_90787.html)

[7] Paul Campos “CAMPOS: Was Spitzer targeted?” *The Rocky Mountain News*, March 12, 2008 at:  
<http://www.rockymountainnews.com/news/2008/mar/12/camposwas-spitzer-targeted/>

When published also at “Common Dreams” a progressive blog, the Campos article evoked a fascinating range of comments. See them at: <http://www.commondreams.org/archive/2008/03/12/7639/>